IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 740 OF 2004

Shri Anna Rama Khot & ors. ... Appellants

V/s

Shri Narayan Pandurang Shinde ... Respondent

Mr. Vijay Mane for the appellants.

CORAM: P.V. KAKADE, J.

DATED: 4TH JULY, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. Dist Judge, Islampur dated 6.10.2003 allowing the appeal and setting aside the judgment and order passed by the Civil Judge, Jr. Divn., Islampur dated 28.10.1994 dismissing the plaintiff's suit for perpetual injunction against the present appellants.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiff filed the suit for perpetual

injunction against the appellants-defendants and alternatively for possession of the suit property in respect of the land Gat No. 824 admeasuring 17 Ares situated at Masuchiwadi in Tal. Islampur. It was the case of the plaintiff that the suit property was in his possession and he was cultivating the same. The old survey number of the suit property was 799/2 and it was in cultivation of Rajaram and Namdev Phatak. Plaintiff obtained possession on 31.12.1965 from Rajaram and Namdev. Since then the plaintiff is in possession of the suit property. However, the name of Maruti Phatak in the record of right was wrongfully laid down as it was entered under the scheme of consolidation. It is the case of the plaintiff that the entry in the name of Anna Rama Khot i.e. the present appellant No.1 was bogus and illegal and in fact the appellants were in no way concerned in the suit property and was obstructing his possession. Hence the suit came to be filed.

Defendants contested the suit on the ground that the revenue record showed that they were in possession of the suit land and hence the suit was sought to be dismissed.

4. The learned Trial Judge heard both sides and on the

basis of available evidence came to the conclusion that the plaintiff had neither proved his exclusive possession over the suit property nor he proved that defendants had obstructed his possession and as such the suit came to be dismissed.

The appeal was carried to the District Court, Islampur. The learned Addl. District Judge, Islampur, after hearing both parties came to the conclusion that the plaintiff had proved his possession over the suit property and as such the appeal came to be allowed. Hence the present appeal.

5. At the outset, it must be noted that there is no substantial question of law involved in this appeal. All the issues involved are the issues of fact which are seen to be properly appreciated on the basis of available evidence by the learned lower appellate Court Judge. It is to be noted that the present appellants defendants did not enter the witness box to depose the facts on oath but only sought to rely upon the mutation entry on record. The record further showed that the present respondent defendant had come out with the case that the plaintiff had executed agreement to sale the suit property in favour of the defendant but by way of

benami transaction it was entered into the name of Bajrang Gopala Khot. Thus by virtue of said agreement of sale, the defendants were in possession of the suit property as their names were entered into the suit property records on the basis of agreement to sale. However, curiously enough the said agreement is not on record which was the only available document which could be helpful to the plaintiff. However, in absence thereof, the theory of alleged benami transaction cannot withstand and mere entries in revenue record would not be of any help to the appellants-defendants. Therefore, the findings recorded by the learned lower appellate Court Judge appears to be correct and, therefore, it would brook no interference.

In the result, the appeal stands dismissed with no order as to costs. Consequently, the civil application No. 930 of 2004 also stands dismissed with no order as to costs.

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